

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

BFI WASTE SERVICES OF QUINCY¹

Employer

and

Case 14-RC-12428

LOCAL UNION NO. 148, INTERNATIONAL
UNION OF OPERATING ENGINEERS, AFL-CIO²

Petitioner

**REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

The Employer collects commercial and residential waste from a hauling facility in Quincy, Illinois, and disposes of the waste at its nearby landfill in La Grange, Missouri. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of drivers, mechanics, and laborers at the Employer's Quincy, Illinois, facility.³ A hearing officer of the Board held a hearing and the parties filed briefs with me.

The parties disagree on only one issue: whether the unit must include the five landfill operators employed at the Employer's landfill in La Grange, Missouri. The Petitioner contends that its requested unit of 22 employees at the Quincy facility is an appropriate unit. The Employer, however, contends that the smallest appropriate unit must also include the landfill operators.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ At the hearing, the Petitioner amended its petition to request a unit of "drivers, mechanics, tire men and repair men." Because the Employer does not classify any of its employees as tire men or repair men, I have described the unit sought in accordance with evidence adduced at the hearing.

I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the single-facility unit sought by the Petitioner is not an appropriate unit.

I. OVERVIEW OF OPERATIONS

The Employer operates a waste hauling facility in Quincy, Illinois, located approximately 16 miles from its 70-acre landfill in La Grange, Missouri. From the Quincy facility, the Employer collects residential, commercial, and industrial waste from communities in the tri-state area (Missouri, Iowa, and Illinois) within a 75-mile radius of Quincy. Its drivers transport and dispose of the waste at the La Grange landfill. Waste disposed of by the Employer's Quincy drivers accounts for 70 percent of the landfill's overall intake. Together, the hauling facility and the landfill comprise a single business unit referred to as the "Quincy Business Unit" or "BFI Quincy," which is centrally managed from the Quincy location. The Quincy Business Unit itself is part of a larger unit, the Central Illinois District, operated by the Employer's parent company, Allied Waste.

The general manager of the Quincy Business Unit maintains an office at both the Quincy hauling facility and the landfill. He contacts both locations several times a day, either in person or by phone. There is no other separate supervision over the landfill operations, and other than the general manager, none of the Employer's managerial or administrative staff maintain offices at the landfill. The general manager makes all hiring, firing, disciplinary, lay-off, and wage decisions for employees at both locations, though drivers at the hauling facility are directly supervised by an operations manager. All employee payroll and benefits issues are handled by the human resources/payroll coordinator located at the Quincy hauling facility.

A. THE QUINCY HAULING FACILITY

There are 30 individuals who work at the Quincy facility, including the 18 drivers, 3 mechanics, and 1 laborer whom the Petitioner seeks to represent. The other eight individuals include the general manager, an operations manager, a human resources/payroll coordinator, a

division controller, a receptionist, an accounts payable clerk, a customer service representative, and a dispatcher. All of these individuals work out of a single building that contains the offices, maintenance shop, an employee locker room, and two parking areas for the trucks and waste containers. The Quincy drivers operate four different kinds of trucks to collect, transport, and dispose of waste: roll-offs, front loads, rear loads, and container delivery trucks. To operate any of these trucks, the drivers must possess a Class B commercial driver's license.

A roll-off is similar to a dump truck. The driver of a roll-off truck services industrial customers requiring assistance with the disposal of industrial waste. The driver picks up the large container filled with waste from the customer, dumps the waste at the La Grange landfill, and returns the empty container to the customer. On an average day, a roll-off driver makes approximately 6 to 7 trips to the La Grange landfill, 5 days a week. Each time, the 25-ton roll-off truck is weighed by the scale house clerk before and after the load is dumped because the customer's bill is calculated by the volume of waste deposited. While there are normally three regular roll-off drivers, that number increases to four or five during the Employer's busy season. Some roll-off drivers are paid on an incentive basis, while others receive an hourly rate. The incentive plan rate of pay is tied to driving distances and is designed to be comparable to the hourly rate received by the drivers and other employees of the Quincy Business Unit, somewhere between \$10.50 and \$11.50 an hour.

A front load is a 25-ton truck with a forklift in the front that picks up commercial and industrial waste, lifts it overhead, and then dumps it into the back of the truck where it is compacted. A front load driver makes approximately 3 trips to the La Grange landfill a day, 5 days a week. There are normally three full-time front load drivers. These drivers are paid on an incentive basis where the rate of pay is calculated according to the total volume of discarded waste. Again, this rate is comparable to the hourly rate received by the other employees of the Quincy Business Unit.

Rear load trucks are used to pick up residential waste, which as the name implies, is loaded into the rear of the truck. After picking up waste from all the houses on his route, a rear-load driver makes one trip to the landfill at the end of the shift. At the landfill, the driver operates hydraulic lifts that raise the rear of the truck and push the waste out of the truck. The driver then returns to the Quincy office to finish any necessary post-trip paperwork. On a typical day, a rear load driver travels anywhere from 75 to 175 miles. There are normally five rear load drivers. At least 1 of the rear-load drivers only runs his route 3 days a week and spends the other 2 days in the shop assisting the laborer. Some rear load drivers participate in an incentive plan where the rate of pay is based upon the volume of waste transported to the landfill, while others receive the hourly rate. Again, the incentive plan is comparable to the hourly rate.

Finally, there are two regular container delivery drivers who transport large containers or dumpsters to personal residences. After the residential customer has filled the container, the driver picks it up and deposits the contents at the La Grange landfill. The record does not reveal how many trips these drivers make to the La Grange landfill on a daily basis. These drivers receive an hourly rate. The Employer also has three “swing” drivers who can operate all four truck types.

All maintenance on the trucks is performed by three mechanics at the Quincy location. While they do not perform the regularly scheduled maintenance on the heavy equipment used at the La Grange landfill, the mechanics spend approximately 15 to 20 percent of their time at the landfill performing minor repairs and welding on an as needed basis. At the Quincy location, there is one laborer who performs a variety of assorted tasks, related mainly to the cleaning, repairing, and repainting of containers. Both the mechanics and the laborer make approximately \$11.50 an hour.

B. THE LA GRANGE LANDFILL

There are six employees who work at the La Grange landfill, including five landfill operators and one scale house operator at the La Grange landfill. Neither party seeks to

include the scale house operator in a unit. At the landfill, there is a work trailer with an office, a maintenance shed, and two fuel tanks. In the trailer, there is a restroom, a break room, coffee machines, vending machines, and a first aid kit, which can be utilized by the Quincy drivers or mechanics as well as the landfill operators. The five landfill operators run heavy equipment including a compactor used to compact waste in the hole; a D6 Caterpillar also used to compact waste and cover it with dirt; a DU3 tractor used to cover waste with dirt; a motor grader; a water truck; a small tractor used to cut grass and broom off the roads; and a tractor-trailer. While the landfill operators are not required to have a commercial driver's license in order to operate the heavy equipment, they do need a Class A commercial driver's license in order to drive the tractor-trailer to transport accumulated rain water from a holding lagoon to a nearby wastewater treatment plant. Swing drivers from the Quincy hauling facility may also perform this task on occasion, though the record does not reflect whether this occurs with any frequency. Like the other hourly employees at the Quincy location, landfill operators receive an average of approximately \$11.50 an hour.

C. THE WASTE DISPOSAL PROCESS

All of the drivers follow the same basic procedure upon arrival at the landfill. After weighing the truck, the driver proceeds approximately three city blocks up a hill and down the other side to a four-to-six acre dumping area referred to as "the hole." Depending upon the weather, if it is extremely muddy or slick due to ice, rain, or snow, a driver may experience difficulty and need to be pulled up the hill or in or out of the hole by a landfill operator. A landfill operator may also have to dig frozen industrial waste out of the containers with a backhoe.

Depending upon how many trucks are at the landfill, a driver may have to wait anywhere from 5 minutes to an hour to dump a load of waste. Once the driver is in the hole, a landfill operator directs the driver, either orally or by hand signals, as to where to dump the load. In the hole, the landfill operator runs a compactor to spread out and flatten the waste. At the end of the day, landfill operators cover the waste with dirt and grade.

II. SCOPE OF THE UNIT

A. OVERVIEW OF APPLICABLE LAW

A single plant unit is presumptively appropriate. As the Petitioner seeks a presumptively appropriate unit, the Employer must introduce relevant, affirmative evidence to rebut that presumption. *Waste Management Northwest*, 331 NLRB 309 (2000); *Dayton Transport Corp.*, 270 NLRB 1114, 1115 (1984). To rebut the presumption, the Employer must show that the single plant unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, function, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *Dayton Transport Corp.*, *supra*; *Orkin Exterminating Co.*, 258 NLRB 773 (1981). Inasmuch as there is no bargaining history at either facility, further discussion of that factor is unnecessary and analysis focuses on the remaining relevant factors.

B. DISCUSSION OF RELEVANT FACTORS

1. Centralized Control Over Labor Relations

The record establishes clear central control over the daily operations and labor relations of the Quincy hauling facility and the La Grange landfill. There is no local autonomy at the La Grange landfill. The general manager of the Quincy Business Unit is the only supervisor involved in the landfill's operation. There is no other independent supervision over the day-to-day work of landfill employees or the facility's ordinary daily operations. At the Quincy facility, the drivers are directly supervised by an operations manager, who in turn reports to the general manager. However, the general manager also plays a role in the direct daily supervision of the drivers. The rear load driver testified that he discussed daily work assignments and requests for time off directly with the general manager. Further, the general manager is the only direct supervisor over the mechanics and the laborer.

In sum, the uncontroverted evidence plainly establishes that the general manager of the Quincy Business Unit makes all decisions regarding personnel policies and procedures applicable to employees at both locations. He makes all hiring, firing, disciplinary, lay-off, leave, vacation, and wage decisions for employees at both facilities. All personnel files and payroll records are maintained at the Quincy facility and orientation and new hire training is conducted at the Quincy facility or by Quincy management.

2. Similarity of Skills, Function, and Working Conditions

The record establishes some similar skills, integrated function, and similar working conditions. The Employer does not require any educational level beyond high school or any particular training for any of its positions at either facility. Though the Employer looks for applicants with experience relevant to the particular position, the record establishes that the employees receive most of their training on the job. While they generally perform separate tasks, the Quincy employees and the landfill operators function together to provide waste disposal services to the Employer's customers. In some areas, however, their skills overlap. Like the drivers, the landfill operators perform driving work when transporting rainwater from the landfill lagoon to the wastewater treatment plant. A commercial driver's license is required to operate the tractor-trailer utilized for this purpose and all of the operators have a commercial driver's license. Like the mechanics and the laborer, the operators also perform minor repairs on equipment, including welding.

The general manager testified that there is a substantial amount of cross-training between the drivers and the landfill operators. However, it appears that at the present time only two of its drivers can operate the heavy landfill equipment, though the Employer is currently in the process of training its three swing drivers on the heavy equipment at the landfill. Two of the five landfill operators have driven trucks at the hauling facility.

All employees are subject to the same general terms and conditions of employment. Their pay rates are comparable and they share the same fringe benefits such as vacation days,

allowance for work boots, disability insurance, 401(k) plan, and health and welfare benefits plan. All of the employees work approximately 50 to 52 hours per week. The landfill operators, mechanics, and the laborers work similar schedules, although the drivers' schedules vary depending upon their routes. All employees are required to wear the same uniform and are governed by the same handbook and personnel policies.

3. Employee Interaction and Interchange

There is substantial interaction between the Quincy hauling employees and the landfill operators. As for the Quincy drivers, it appears that some drivers have more daily contact with the landfill operator than others, but in all cases the contact is regular and frequent. Roll-off drivers, who make 6 to 7 trips a day to the landfill, 5 days a week, have more contact with the landfill operators than the rear load drivers, who only make 1 daily trip to the landfill. The extent and nature of the contact is the same for all drivers. Regardless of truck type, landfill operators direct the drivers as to where to deposit the waste load. Landfill operators also provide any necessary assistance to drivers who may get stuck while driving in and out of the hole in bad weather conditions or whose loads have frozen. It is not clear how frequently this occurs, as weather is the main variable, but the rear load driver testified that this happened "a lot of times." There is also regular contact between the Quincy mechanics and the landfill operators, as the mechanics spend 15 to 20 percent of their time performing minor repairs on machinery at the landfill.

In addition to the interaction that occurs in connection with the dumping of waste, there is also evidence of employee interchange. A rear-load driver estimated that he had worked at the landfill approximately 8 to 10 times in the previous 6-month period, picking up and bagging windblown waste, work traditionally performed by a landfill operator. The record contains other specific instances of occasions where the Employer temporarily transferred a driver to the landfill to perform landfill operator work. In one instance, the Employer reassigned a driver, whose license was suspended, to work as a landfill operator during the 2-month period when he

was unable to drive. When his suspension ended, the employee resumed his driver duties at the hauling facility. During the busy summer season in June 2002, the Employer assigned a driver to haul dirt at the landfill for a few days. More recently, in January 2003, the Employer permitted a driver who felt incapable of safely performing his driving duties to perform landfill operator work for a brief period. In addition to these specific examples, the evidence suggests that the Quincy swing drivers have performed landfill operator work in the past and will in the future. However, this testimony lacks specificity and is therefore of little evidentiary value.

As for temporary transfers involving landfill operators, within the last year, the Employer reassigned a landfill operator to work with a rear delivery driver on a residential route for approximately a month. Finally, the Employer's drivers and landfill operators may work together on day-long projects referred to as "city clean-ups" that occur six or seven times a year.

There is evidence of permanent transfers between the two facilities. As recently as February 2003, the Employer permanently transferred a roll-off driver to the landfill to work as a landfill operator. In that case, the Employer had previously assigned the roll-off driver to the landfill to help out on a temporary basis. After the driver excelled at the landfill operator work, the Employer made the transfer permanent. Similarly, in April 2002, the Employer permanently transferred a landfill operator to the waste hauling facility to fill an opening for a roll-off driver. In another case, a roll-off driver transferred to the landfill operator position for nearly a year before returning to the roll-off driver position in January 2001.

4. Geographic Proximity

The facilities are in fairly close proximity; the La Grange landfill is 16 miles by land and 9 miles by air from the Quincy waste hauling facility. Driving time is approximately 20 to 25 minutes.

C. ANALYSIS

The Employer has met its burden of establishing a functional integration so substantial as to negate the separate identity of the single-facility unit sought by the Petitioner. *R & D*

Trucking, Inc., 327 NLRB 531 (1999). Here, the record reflects the highly integrated nature of the Employer's waste hauling and landfill operations; the administrative and operational dependence of the landfill upon the Quincy location is clear. Together, these locations effectively function as a single business unit. The Petitioner acknowledges, as it must, that the Employer's general manager exercises overall responsibility for all labor relations at both locations.

In considering the factors that the Board analyzes to determine whether the single-facility presumption has been rebutted, I accord great significance to the absolute dearth of local autonomy at the La Grange landfill. While the Petitioner argues that there is a lack of significant employee interchange and geographic proximity, and urges that these factors be given precedence, along with Petitioner's desires, this suggestion contravenes the Board's holding in *Waste Management Northwest*, 331 NLRB 309 (2000). There, the Board held that an employer had rebutted the single-facility presumption, even absent evidence of substantial employee interchange and geographical proximity where, as here, the evidence otherwise established a functional integration of the operations; centralized control over labor relations; lack of local autonomy; common supervision of employees at both locations; similar terms and conditions of employment; and interaction and coordination between the two groups. Although the duties and skills of the employees at issue in *Waste Management Northwest* were identical, this factor does not invalidate the applicability of its analysis here, where the other factors are present and the employees' duties at the two facilities are integral parts of the waste disposal process and overlap in some respects. See *Neodata Product/Distribution*, 312 NLRB 987 (1993). Thus, I conclude that the lack of any local autonomy at the La Grange landfill is sufficient to rebut the single-facility presumption where, as here, the evidence also establishes regular face-to-face contact among employees; temporary and permanent interchanges among employees; shared wage rates, benefits, and personnel policies; and fairly close geographic proximity and functional integration. See e.g. *Waste Management Northwest*, *supra*; *Dayton Transport Corp.*,

supra; *White Castle System*, 264 NLRB 267, 268 (1982); *Budget Rent A Car Systems*, 337 NLRB No. 147 (2002); *Orkin Exterminating Co.*, supra; *R & D Trucking, Inc.*, supra (reversing Regional Director's Decision to include employees at separate facility where company president supervised employees at both facilities); *Cargill, Inc.*, 336 NLRB No. 118 (2001) (single-facility presumption not rebutted where facility had significant local autonomy over labor relations and separate supervisory staff at each facility); *Rental Uniform Service, Inc.*, 330 NLRB 334 (1999) (reversing Regional Director's inclusion of locations that possessed significant local autonomy with respect to hiring, discipline, and day-to-day supervision of employees and other labor relations matters); *New Britain Transportation Co.*, 330 NLRB 397 (1999) (centralized control over labor policies is insufficient to rebut presumption where evidence demonstrates significant local autonomy over labor relations); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (reversing Regional Director's conclusion that facility lacked local autonomy because manager only exercised routine decision making power where manager played role in hiring and disciplinary process); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) (single-facility presumption not rebutted where immediate supervision and day-to-day control over employees were separate and autonomous from those of employees at the separate facility).

III. FINDINGS AND CONCLUSIONS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will

effectuate the purposes of the Act to assert jurisdiction herein.⁴

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, mechanics, laborers, and landfill operators employed by the Employer at its Quincy, Illinois and La Grange, Missouri facilities, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act and all other employees.⁵

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: Local Union No. 148, International Union of Operating Engineers, AFL-CIO.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll

⁴ The Employer, BFI Waste Services of Quincy, a Delaware corporation, with its principal office located at 3110 Kochs Lane, Quincy, Illinois, is engaged in providing commercial and residential waste collection and disposal services. The Employer annually provides such services valued in excess of \$50,000 directly to customers located in the State of Illinois, each of which customers meets other than a solely indirect standard for the assertion of the Board's jurisdiction.

⁵ No party seeks to include the scale house clerk, who is the only employee at the landfill other than the operators. The duties of the scale house clerk are not entirely clear, other than she weighs the trucks, which drive onto a scale as they enter the landfill, and apparently does not perform operator duties. As the record establishes that the operations of both facilities are highly integrated and that other employees at the Quincy facility have been excluded from the unit, I find that the scale house operator need not be included as a residual employee and therefore, in agreement with the parties, I shall exclude her from the unit found appropriate here.

period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used in communication with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the

list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the 14th Region, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103 on or before **April 3, 2003**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. The Board in Washington must receive this request by **April 10, 2003**. The request may not be filed by facsimile.

Dated March 27, 2003
at Saint Louis, Missouri

Leo D. Dollard, Acting Regional Director
National Labor Relations Board, Region 14

420-4008
420-4617
440-3300